



THE COMMONWEALTH OF MASSACHUSETTS
Appellate Tax Board

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Docket No. S339691

STEPHEN GERRIOR
Appellant
v.

COMMISSIONER OF REVENUE
Appellee

DECISION WITH FINDINGS

The Commissioner's Motion to Dismiss is allowed, and the referenced appeal is dismissed for lack of jurisdiction.

At issue in this appeal were personal income taxes assessed to the appellant, Stephen Gerrior, for the tax years ending: December 31, 2008; December 31, 2009; December 31, 2010, and December 31, 2012 (collectively, the "tax years at issue."). For each of the tax years 2008 through 2010, the appellant timely filed a Massachusetts Resident Income Tax Return on April 15th of the year following the tax year at issue. For tax year 2012, the appellant filed a Massachusetts Resident Income Tax Return on August 12, 2013.

Following the filing of these returns, the Commissioner made additional assessments of tax on the basis of information received from the Internal Revenue Service, and notified the appellant of these assessments by issuing Notices of Assessment dated: March 28, 2013; August 5, 2013; August 21, 2013, and March 12, 2014, respectively, for each of the tax years at issue.

The appellant filed Massachusetts Form ABT Application for Abatement/Amended Return (Application for Abatement) with respect to the additional assessments with the Commissioner on January 22, 2020. The Commissioner denied the appellant's Application for Abatement by Notice of Abatement Determination dated January 30, 2020. The appellant filed the present appeal with the Appellate Tax Board ("Board") on April 28, 2020.

G.L. c. 62C, § 37 provides, in pertinent part, that an Application for Abatement must be filed with the Commissioner within three years of the filing of the return, two years of an assessment, or one year of tax payment, whichever is later. In this case, three years

from the date the last tax return was filed was August 12, 2016. Two years from the most recent assessment was March 12, 2016, and one year from the most recent payment was November 29, 2017. The appellant's Application for Abatement was filed with the Commissioner on January 22, 2020, well outside any of the time limits set forth in G.L. c. 62C, § 37.

The abatement remedy is created by statute and, therefore, the Board has only that jurisdiction conferred on it by statute. ***Commissioner of Revenue v. Pat's Super Market, Inc.*** 387 Mass. 309, 311 (1982). Timely filing of an abatement application has long been held a condition of invoking the Board's jurisdiction. See e.g., ***Dana Lease Finance Corp. v. Commissioner of Revenue***, 53 Mass. App. Ct. 840, 843 (2002); ***Nissan Motor Corp. in U.S.A. v. Commissioner of Revenue***, 407 Mass. 153, 157 (1990). Neither courts nor this Board have the authority to create an exception to the time limits specified by statute. ***Sears Roebuck & Co. v. State Tax Commission***, 370 Mass. 127, 130 (1976); ***Peterson v. Commissioner of Revenue***, Mass. ATB Findings of Fact and Reports 1994-305.

Because the appellant did not timely file his Application for Abatement with the Commissioner in accordance with G.L. c. 62C, § 37, the Board finds and rules that it has no jurisdiction over this appeal. On this basis, the Board allows the Commissioner's Motion to Dismiss for lack of jurisdiction. The Decision is for the appellee.

APPELLATE TAX BOARD

By: */s/ Patricia M. Good*
Patricia M. Good, Commissioner

Attest: */s/ William J. Doherty*
Clerk of the Board

Date: May 11, 2021

NOTICE: Pursuant to G.L. c. 58A, §§ 7B and 13, no further appeal is available and the Board will issue no further findings of fact or reports.